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BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
MIKE McHUGH,
d.b.a. McHUGH-BOWMAN CONSTRUCTION,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 77-106

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$100 civil penalty for the alleged violation of Section 8.02(3) of respondent's Regulation I, came before the Pollution Control Hearings Board, W. A. Gissberg, Chairman (presiding), Dave J. Mooney and Chris Smith at a formal hearing on October 31, 1977 in Seattle, Washington.

Appellant, a partnership, appeared through its partners, Mike McHugh and Steve Bowman; respondent appeared by and through its attorney, Keith D. McGoffin.

Having heard the testimony, having examined the exhibits, and having

1 considered the contentions of the parties, the Pollution Control Hearings
2 Board makes these

3 FINDINGS OF FACT

4 I

5 Appellant is a partnership engaged in construction of residences in
6 Kent, Washington. The partnership engaged two young men to rid a
7 construction area of debris which was located at 12623 S.E. 231st Street
8 in Kent. Because the debris included asphalt sheeting, cardboard, wire,
9 crating material and "general trash" which the partners knew should not be
10 burned, instructions were given by them that the debris was to be hauled
11 away. However, on June 27, 1977, because the young men could not get their
12 truck to operate and the deadline for them to complete their task was
13 fast approaching, appellant's instructions were disregarded and three piles
14 of the debris were set on fire. After the fires were "going good," Mike
15 McHugh, a partner, arrived, observed them, but made no effort to put them
16 out. Sometime after McHugh departed, respondent's inspector arrived as a
17 result of a complaint received by telephone. The inspector found the
18 fires, each 4 feet by 3 feet by 2 feet high, containing the aforementioned
19 debris and observed black smoke emissions from them. Appellant, which has
20 had no previous violations, was issued a Notice of Violation from which
21 followed a civil penalty in the amount of \$100 and this appeal.

22 II

23 Pursuant to PCW 43.21B.260, respondent has filed a certified copy
24 of its Regulation I and amendments thereto which we notice.

25 Section 8.02(3) of the regulation makes it unlawful for any person
26 to cause or allow an outdoor fire containing garbage, asphalt, petroleum.

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 products, paint, rubber products, plastics or any substance other than
2 natural vegetation which normally emits dense smoke. Section 3.29
3 provides for a penalty of up to \$250 per day for each violation of
4 Regulation I.

5 III

6 Any Conclusion of Law which should be deemed a Finding of Fact is
7 hereby adopted as such.

8 From these Findings, the Pollution Control Hearings Board comes to
9 these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over the persons and over the subject
(3 matter of this proceeding.

14 II

15 While appellant is correct in its contention that it did not "cause"
16 the fire to be ignited, it did "allow" the same to be continued after its
17 discovery. Therefore, Section 8.02(3) of Regulation I of respondent was
18 violated. Such a technical distinction may not be readily apparent to
19 appellant, but it nonetheless exists in the law. However, we believe
20 that under the circumstances, the civil penalty should be suspended.

21 III

22 Any Finding of Fact which should be deemed a Conclusion of Law
23 is hereby adopted as such.

24 From these Conclusions, the Pollution Control Hearings Board
25 enters this

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

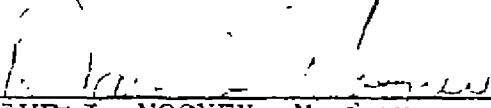
ORDER

The \$100 civil penalty is affirmed, provided however, that such penalty is suspended on condition that appellant not violate the provisions of Regulation I for a period of one year from the date of this Order.

DONE at Lacey, Washington, this 7th day of November, 1977.

POLLUTION CONTROL HEARINGS BOARD


W. A. GISSBERG, Chairman


DAVE J. MCONEY, Member


CHRIS SMITH, Member